

CIVIL REVISION APPLICATION NO. 1667 OF 1996.

Date of decision: 4.2.1997.

For approval and signature

The Honourable Mr. Justice R. R. Jain

Mr. R. S. Sanjanwala, advocate for petitioner.

Mr. A. L. Shah, advocate for the respondent.

1. Whether Reporters of Local Papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Coram: R.R.Jain,J.

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February 4, 1997.

Oral judgment:

Rule. Mr. A.L. Shah, learned advocate waives service of rule on behalf of the respondent.

Heard the learned advocates.

Petitioner/original opponent is the husband of respondent/ original applicant in Hindu Marriage Petition

No. 59 of 1992 pending in the City Civil Court, Ahmedabad. During the course of hearing, the respondent made application Ex. 77 for amendment in pleadings and for raising additional issue referred to in para 5 of that application. Vide order dated 16.8.1996 the Court below allowed the application with liberty to both the parties to lead additional evidence, if necessary, in the facts and circumstances of the case. Aggrieved by this order the opponent has preferred this revision application.

During the course of arguments, Mr. Sanjanwala, learned advocate for the petitioner, has fairly conceded that on merits the order allowing amendment cannot be assailed as no error of law or material irregularity can be pointed out. However, is aggrieved by the order by which liberty is given to both the parties to lead additional evidence. Mr. Shah for the respondent states that despite amendment his client does not want to lead any additional evidence. Similarly Mr. Sanjanwala has also agreed that the petitioner too would not lead any additional evidence despite amendment. In light of aforesaid concession there is no necessity to set aside the impugned order so far as it relates to grant of amendment in the main petition. However, the direction affording opportunity to both the parties to lead further evidence is required to be set aside.

Accordingly, the petition is partly allowed. The impugned order so far as it relates to amendment is confirmed. The petitioner is permitted to amend the petition within two weeks from today. However, the order granting liberty to both the parties to lead additional evidence in light of amendment is hereby set aside. The court below to decide the matter on the strength of material and evidence available on record. Rule is made absolute to the aforesaid extent with no order as to costs.